UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Stockton, CA)

DANA CORPORATION

Employer[1]

and Case 32-RC-5370

SHOPMEN IRONWORKERS
LOCAL UNION NO. 790[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Dana Corporation, is engaged in the manufacture of Toyota truck body frames in Stockton, California, where it employs approximately 300 employees. The Petitioner, Shopmen Ironworkers Local Union No. 790, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, and it seeks to represent a unit consisting of all full-time and regular part-time production and maintenance employees employed by the Employer at its Stockton facility, including team leaders (also known as lead technicians), alternate team leaders, production or product control specialists (also known as material handler specialists), quality specialists, product technicians (including quality control technicians, forklift operators, cycle counters, and material handlers), support technicians (including maintenance technicians, maintenance lead technicians, controls technicians, and E-coat technicians), and support apprentice technicians; excluding all other employees, guards, and supervisors as defined under the Act, and further excluding temporary employees and temp-for-

[1] The name of the Employer appears as amended at the hearing.
[2] The name of the Petitioner appears as amended at the hearing.

hire employees. A hearing officer of the Board held a hearing, and the Employer filed a brief with me.[3]

The only issue in dispute here is whether the employees classified as "temp-for-hire" employees, who are supplied to the Employer by Volt Services Group, hereinafter called Volt, must be included in the Petitioner's proposed unit.[4] The Employer contends that the smallest appropriate unit in this case would include the Petitioner's proposed unit plus the 14 temp-for-hire employees supplied by Volt, because the employees in the Petitioner's proposed unit and the temp-for-hire employees share a very strong community of interest and Volt has consented to being included in a multiemployer unit. The Petitioner takes the position that it opposes the inclusion of the temp-for-hire employees in the unit; that the Employer's proposed combined unit is a multiemployer unit; and that under current Board law, a multiemployer unit will be found appropriate only with the consent of all of the parties.

The hearing in this case was held, and the record was closed, on August 19, 2005. On August 24, 2005, the Employer filed a motion to reopen the record. In its motion, the Employer asked that it be granted permission to introduce, and that I receive into evidence, an August 24,

[3] Both parties were afforded the opportunity to file briefs. Petitioner did not do so but tendered oral argument at the hearing. I have duly considered the Employer's brief and Petitioner's oral argument.

[4] At the hearing, the parties agreed that the team leaders and alternate team leader, herein collectively referred to as the team leaders, should be included in the unit. The Hearing Officer proposed that the parties stipulate that the team leaders are not statutory supervisors and that they do not possess certain supervisory indicia. The Petitioner said that the proposed stipulation was consistent with its understanding of the facts. The Employer stated that "we can stipulate to that," but stated that it wanted the Regional Director to rule on that issue and introduced evidence regarding the limited authority of the team leaders. The evidence shows that the team leaders are responsible for training new employees, preparing the jobsite, knowing all the jobs on the team, providing feedback as to team quality, encouraging safe work habits, facilitating problem solving discussions regarding production problems, engaging in repairs, firefighting, housekeeping and preparing documentation. There is no evidence that the team leaders have any of the authority listed in Section 2(11) of the Act.
In its brief, the Employer noted the absence of evidence showing that the team leaders had any supervisory authority and took the position that the team leaders are not supervisors as defined in the Act. In these circumstances, there is no dispute regarding the employee status of the team leaders, and based on the agreement of the parties and the record as a whole, I have included the team leaders in the unit. I have also concluded that because no one is asserting that the team leaders are supervisors as defined in the Act, and there is no record evidence raising that issue, I need not further address this non-issue in my decision. See Bennett Industries, Inc., 313 NLRB 1363 (1994).

2005 letter from Volt, which states that Volt confirms that it and the employer jointly employ the 14 temp-for-hire employees supplied by Volt and that Volt consents to be included in a multi-employer bargaining unit with the Employer regarding these jointly employed employees.[5] On August 31, 2005, I consequently issued an Order Reopening Record and Notice of Representation Hearing, in which I reopened the record for the limited purposes of receiving evidence of assent to a multi-employer bargaining unit by any of the Employer's three currently used temporary employment agencies, and to address questions directly related to the assent issue. On September 2, 2005, the Region received a letter from Petitioner in which Petitioner notified the Region that it had no objection to receiving into the record the additional evidence proffered by the Employer with its motion to reopen. Because of the Petitioner's agreement to the inclusion in the record of Volt's August 24, 2005 assent letter, and the Employer's assertion that its other two currently used temporary employment agencies were refusing to consent to a multi-employer unit, I issued an Order Closing Record and Rescinding Notice of Representation Hearing on September 6, 2005, in which I received into evidence Volt's August 24, 2005 letter agreeing to a multi-employer unit.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

At its Stockton, California facility, the Employer manufactures Toyota truck frames for New United Motor Manufacturing (NUMMI) in Fremont, California and for Toyota Motor Manufacturing de Baja California (TMMBC) in Tijuana, Baja California, Mexico. The Employer's plant operates with two production shifts and three maintenance shifts. The two eight-hour production shifts are from 6:00 a.m. to 2:30 p.m., and from 5:00 p.m. to 1:30 a.m.

[5] In its motion, the Employer also noted that it was attempting to secure similar evidence from two other temporary employment agencies it utilizes (Adecco and Manpower). However, on September 6, 2005, the Employer notified the Region that those two agencies have refused to consent to being included as part of a multi-employer bargaining unit.

The production employees work on an assembly line that produces a truck frame approximately every 60 seconds. Along the line, production employees engage in welding, bolting, riveting, and painting of the truck frame. Ed Eckanroth is the plant manager. Among the supervisors who report to Eckanroth are production coordinators and department managers. The approximate total number of employees at the Stockton facility is 300.

II. THE EXCLUSION OF THE TEMP-FOR-HIRE EMPLOYEE ISSUE[6]

A. THE FACTS RELATING TO THE TEMP-FOR-HIRE ISSUE

The Employer uses three categories of employees: its own employees, temporary employees sent from temporary employment agencies and temp-for-hire employees, who are employees of a temporary agency who have been selected for a program that may lead them to become employees of the Employer. There are currently 17 temp-for-hire employees at the facility, although the number can range as high as between 20 and 30.

Since 1998, the Employer has used the temp-for-hire process as its exclusive source for new hires. Over the years, the temp-for-hire employees have been supplied by various temporary employment agencies, and the currently employed temp-for-hire employees were provided by Volt, Adecco, and Manpower.[7] When the Employer decides to start a new temp-for-hire group, it appears that temporary employees may apply for the temp-for-hire program, they may be recommended for participation in the temp-for-hire program by a supervisor, or, at the Employer's request, the temporary agency may recommend possible participants. The Employer then selects which individuals will be accepted into the program.

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[6] The Employer also utilizes the services of temporary or "temp" employees, who are to be distinguished from temp-for-hire employees. The parties stipulated that the temporary employees, as contrasted with the temp-for-hire employees, should not be included in the unit, and I find that they should be excluded from the unit.

[7] The record reflects that of the approximately 17 temp-for-hire employees currently working at the Stockton facility, 14 were assigned by Volt, with the remaining three assigned by Adecco and/or Manpower.

The newly selected temp-for-hire employees initially receive a 40-hour welding training course taught by instructors employed by the Employer. After these individuals complete the welding training by satisfactorily passing a written safety test, a written welding test, and an actual welding test, they receive a temp-for-hire handbook from the Employer and are assigned to a welding position on the production line. Then, every 30 days, the temp-for-hire employees are evaluated by their peers (e.g., product technicians) and supervisors. After the completion of 90 days, an individual whose performance and peer reviews have been satisfactory will be hired directly by the Employer, and will then serve an additional 90-day probationary period.

Volt and the other temporary agencies have no full time supervisors on site and no daily interaction with the temp-for-hire employees.[8] The Employer makes all decisions regarding whether an employee will be accepted into the temp-for-hire program, and whether a temp-for-hire employee will be employed by the Employer. The Employer also decides whether temp-for-hire employees should be counseled, disciplined or terminated, and the Employer's supervisors or managers impose such personnel actions. If the Employer decides that it no longer wants a temp-for-hire employee working at its facility, it tells both the employee and the temporary employment agency, and the employee returns to the employment agency.

The Employer also sets the wage rates for temp-for-hire employees. Temp-for-hire employees earn approximately $9 per hour, while regular production employees earn approximately $12 per hour. However, the paychecks for the temp-for-hire employees are actually issued by the temporary employment agencies and sent to the Employer for distribution. The Employer pays the temporary employment agencies a percentage markup on a monthly basis

[8] The record shows that Volt hires temporary employees and supplies them to the Employer. Volt is responsible for paying the wages, benefits, withholding taxes and workers compensations costs of the temporary employees. There is evidence in the record that a Volt supervisor is sometimes present at the facility for a few hours each day and apparently that supervisor's focus is mainly on the regular temporary employees supplied by Volt.

for each employee. This markup, approximately 36-40% of the individual's hourly wage rate, is intended to cover other employment-related costs such as worker's compensation insurance, payroll taxes, other administrative costs, and the agencies' profits.

Like regular employees, the temp-for-hire employees are invited to participate in plant picnics, safety lunches, and holiday parties, and they are also required to attend regularly held plant employee meetings and shop floor area meetings. The Employer maintains the same drug testing criteria for regular and temp-for-hire employees. Temp-for-hire employees are subject to the same plant rules and are required or eligible to work overtime under the same conditions as regular employees. Like regular employees, temp-for-hire employees have access to all employee facilities, such as break areas and locker rooms, and are assigned lockers for their own use. Like regular employees, temp-for-hire employees may buy or rent Dana uniforms from the Employer.

Unlike regular employees of the Employer, temp-for-hire employees are not eligible to participate in the Employer's pension plan, health and welfare plan, life insurance plan, accidental death and dismemberment plan, employee stock purchase plan, mandatory paycheck direct deposit program, matching gift program, employee assistance program, vacation accrual program, paid holiday program, educational assistance program, school leave program, leave of absence program, and jury duty leave program. Temp-for-hire employees are subject to a different employee handbook than are regular employees of the Employer.

As noted previously, the Employer has placed into evidence an August 24, 2005 letter from Volt in which Volt states that the Employer and Volt are joint employers of the temp-for-hire employees supplied by Volt and in which Volt consents to multi-employer bargaining and to abide by any collective bargaining agreement ultimately reached between Petitioner and the

Employer. However, as noted in the Region's September 6 Order Closing Record and Rescinding Notice of Representation Hearing, the other two temporary agencies which currently supply temp-for-hire employees to the Employer (Adecco and Manpower) have not conceded that they and the Employer are joint employers of the temp-for-hire employees these agencies supply, and have refused to consent to a multi-employer unit and bargaining.

B. THE LEGAL ANALYSIS REGARDING THE EXCLUSION OF THE TEMP-FOR-HIRE EMPLOYEES FROM THE UNIT PROPOSED BY THE UNION

1. The Appropriateness of the Petitioner's Proposed Unit

As described above, in this case the Petitioner is seeking a production and maintenance unit, and it specified the job classifications that it believes should be included in such a unit. At the hearing, the Employer agreed to the appropriateness of the production and maintenance unit, except for two classifications. In this regard, the Employer noted that the Petitioner had failed to mention one type of support technician, namely, the controls technicians, and that the Petitioner had improperly listed the temp-for-hire employees as being excluded from the unit. The Petitioner agreed to the addition of controls technicians, but stated that, in reliance on the Board's decision in Oakwood Care Center, 343 NLRB No. 76, slip op. at 5 (2004), it continued to oppose the inclusion of the temp-for-hire employees in the unit, because they are employees of temporary employment agencies. As explained below, I find that Petitioner's proposed unit is an appropriate unit and that the temp-for-hire employees should be excluded from the unit.

In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. See Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950); National Cash Register Co., 166 NLRB 173, 174 (1966);

Dezcon, Inc., 295 NLRB 109, 111 (1989) (the Board need only select an appropriate unit, not the most appropriate unit). A union is not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with the requested unit does not exist. Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997); P. Ballentine & Sons, 141 NLRB 1103, 1107 (1963).

The appropriateness of a proposed unit is determined through the application of the Board's community of interest test. Under that test, the Board analyzes the bargaining history, functional integration, employee interchange, employee skills, work performed, common supervision and similarity in wages, hours, benefits and other terms and conditions of employment. See J.C. Penney Co., 328 NLRB No. 105 (1999); and Armco, Inc., 271 NLRB 350, 351 (1984). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., 273 NLRB 348 (1984).

Here the record shows that the employees in the Petitioner's proposed production and maintenance unit share a strong community of interest, and there is no claim that any other classifications share this community of interest, other than the temp-for-hire employees whom I have excluded from the unit. Thus, the employees in the Petitioner's proposed unit work closely together as part of a functionally integrated production system, and they have common supervision and similar skill levels and wages. All of the Employer's production and maintenance employees are subject to the Employer's centralized administrative system, which provides that they are covered by the same benefits package and are subject to the same personnel policies and wage system.[9] In these circumstances, I conclude that the record as a whole supports the agreement of the parties regarding the appropriateness of the proposed

[9] There is no relevant bargaining history in this case.

production and maintenance unit in this case, and I therefore conclude that the unit sought by the Petitioner is an appropriate unit.

2. The Employer's Arguments That the Petitioner's Proposed Unit Is Not Appropriate

The Employer concedes that it is urging me to approve the kind of multiemployer unit, composed of solely and jointly employed employees, that was addressed in the Board's ruling in Oakwood Care Center, 343 NLRB No. 76, slip op. at 5 (2004). However, the Employer argues that, because it and Volt consent to the creation of the multiemployer unit, such a unit is permissible under the holding in Oakwood. The Employer then goes on to argue that, because the employees in the Petitioner's proposed unit and the 14 Volt supplied temps-for-hire possess such a strong community of interest, the Petitioner's proposed unit is not an appropriate unit unless the Volt temp-for-hire employees are included. In support of this assertion, the Employer relies on Outokumpu Copper Franklin, Inc., 334 NLRB No. 39 (2001). I will first address the Employer's Oakwood consent theory, and then I will address its Outokumpu Copper combined unit theory.

In Oakwood the Board overruled M.B. Sturgis, 331 NLRB 1298 (2000), and decided to return to the precedent established in Greenhoot, Inc., 205 NLRB 250 (1973) and Lee Hospital, 300 NLRB 947 (1990). Thus, in Oakwood, the Board held that solely employed employees of an employer and jointly employed employees of the employer and a temporary employment agency are employees of different employers and the inclusion of these two groups of employees in the same unit creates a multiemployer unit. Id. at 4. The Board also explained that, because combined units of solely and jointly employed employees are multiemployer units, these units "are statutorily permissible only with the parties' consent." Id. Because two of the parties in the

Oakwood case, namely the two employers, had not consented to the petitioned for multiemployer unit, the Board dismissed the petition.

The Employer acknowledges without comment that the Board in Oakwood used the phrase "parties' consent" rather than employers' consent. The Employer, however, points to language from Greenhoot and Lee Hospital, the cases relied on by the Board in Oakwood. In those two cases, the Board stated that multiemployer units may not be imposed without the consent of the "employers," and therefore, the Employer states that in view of its and Volt's consent to the multiemployer unit, the Petitioner's opposition to the unit is not sufficient to preclude the imposition of the multiemployer unit it has proposed. The Employer does not attempt to explain why the Board in Oakwood used the word parties, instead of the word employers, but presumably the Employer believes that the Board inadvertently used the term parties.

I have concluded that there is no basis for concluding that the Board in Oakwood meant to use the phrase employers' consent and did not really intend to use the phrase parties' consent. Thus, the plain meaning of the words used by the Board in Oakwood establishes that all parties must consent to the establishment of a multiemployer unit, and that the phrase all parties includes unions as well as employers.[10]

[10] In Oakwood, the Board also cited language in Greenhoot and Lee Hospital where the Board used the phrase "all employers", rather than the phrase "all parties". This same language was also used in Hexacomb Corporation, 313 NLRB 983 (1994) and Flatbush Manor Care Center, 313 NLRB 591 (1993). Other than the Flatbush case, which does not explicitly identify the position of the petitioning union, each of these cases involved situations where the petitioning union clearly sought the combined unit and therefore the union's consent to the multiemployer unit was already clear. In those circumstances, the Board correctly noted that it would not impose multiemployer units sought by the respective unions, without the consent of the employers. Thus, when viewed in context, the "all employers" language referenced by the Employer does not establish that the Board was finding that a multiemployer unit could be imposed without the consent of the union. I also note that, as in Oakwood, the Board in Brookdale Hospital Medical Center, 313 NLRB 592, 593 (1993), used the phrase the "parties' consent." In these circumstances, the "all employers" language in some of these cases is not a sufficient basis for concluding that the Board in Oakwood inadvertently or inartfully used the phrase all parties when it meant only all employers.

The necessity of having the union's consent is not only established by the plain meaning of the Board's words in Oakwood, it is also established by the wording of the decision as a whole. In explaining its rationale, the Board first noted that "the text of the Act reflects that Congress has not authorized the Board to direct elections in units encompassing the employees of more than one employer." Id. at 3. The Board then acknowledged that the Board and courts have long upheld voluntarily established multiemployer bargaining, when all parties had consented to that arrangement. Id. at 4.[11] The Board also noted in Oakwood that even the holding in Sturgis acknowledged that all party consent was needed for multiemployer units, and that the Board in Sturgis erred by concluding that units composed of employees of a single employer and employees of a joint employer are not a multiemployer unit. Id. Thus, the decision as a whole in Oakwood supports the conclusion that the Board was affirming the need for an all party agreement for the creation of a multi-employer unit.

In this case, the record shows that the Employer and Volt have consented to the multiemployer unit, but that the union has not consented to this arrangement. Therefore, because not all parties have given their consent, I find that there is no legal basis for imposing the multiemployer unit proposed by the Employer. I also note that the Employer's proposed unit includes only 14 of the 17 temp-for-hire employees used by the Employer. It appears that the Employer's only reason for excluding the other 3 temp-for-hire employees is the refusal of Adecco and Manpower, the employers of those three employees, to consent to a multiemployer unit. The Employer does not argue that there is any other significant basis for distinguishing

[11] The Board also acknowledged that in certain retail store cases, multi-employer units sought by the union had been approved despite the apparent absence of the consent of all of the parties. The Board concluded that these cases are not precedent for the single employer unit holding in Sturgis, "because no party raised, and the Board and the reviewing courts did not consider, the statutory restrictions imposed by Section 9(b) on nonconsensual units that are multiemployer in scope." The Board also determined that the retail store industry is unique and that the holdings in the retail store cases are not applicable to most other industries. Id. at 4.

among the 17 temp-for-hire employees, and does not address the significance of the exclusion of these three employees from the proposed unit. In light of the extremely strong community of interest the temp-for-hire employees share, even if the Board were to determine that the Petitioner's consent is not necessary for the multiemployer unit, I would not find a unit that included only 14 of the 17 temp-for-hire employees to be an appropriate unit, because of the conflicts that would arise from this anomalous situation. See Oakwood, Id. at 4-5. (bargaining structure contemplated in Sturgis gives rise to significant conflicts among the various employers and employees involved in the multiemployer bargaining and fails to adequately protect employee rights.)

The Employer's final argument is that, because the Employer's employees share an overwhelming community of interest with the jointly employed temp-for-hire employees, the unit sought by the Petitioner is not an appropriate unit and that the smallest appropriate unit is the combined unit sought by the Employer. In this regard, the Employer points to my previous Decision and Direction of Election in Dana Corporation, 32-RC-5252 (May 27, 2004) in which I relied on the Board's decision in Outokumpu Copper Franklin, Inc., 334 NLRB No. 39 (2001), and concluded that the temp-for-hire employees shared such a strong community of interest with the Employer's employees in the petitioned for unit that the smallest appropriate unit would be a combined unit of those two groups of employees. In its brief, the Employer argues that I should again rely on Outokumpu Copper and find that the Employer's proposed combined unit is the smallest appropriate unit.

In Outokumpu Copper, as in this case, the petitioning union sought a unit limited to the employer's own employees, and the employer argued that the smallest appropriate unit was a unit comprised of the employer's solely employed employees and its jointly employed

employees who were supplied by a temporary employment agency. The Board in Outokumpu Copper expressly stated that, as provided for in Sturgis, it was assessing the appropriateness of the proposed units based on a community of interest test, and it concluded that the community of interest evidence established that the employer's solely employed and its jointly employed employees shared such a strong community of interest that a combined unit of those two groups was the smallest appropriate unit. Outokumpu Copper Franklin, Inc., 334 NLRB at 263.

As noted above, in Oakwood the current Board overruled the decision in Sturgis, and a brief analysis of those two decisions readily shows that the now reversed holding in Sturgis was an essential component of the holding in Outokumpu Copper and thus of the Employer's argument in this case. In both Oakwood and in Sturgis, the Board acknowledged that pursuant to Section 9(b) of the Act, the appropriate unit shall be an "*employer unit, craft unit, plant unit, or subdivision thereof*."[12] The Board then stated:

> Of these permissible categories of units, the broadest is the "employer unit," with each of the other delineated types of appropriate units representing subgroups of the work force of an employer. Thus, the text of the Act reflects that Congress has not authorized the Board to direct elections in units encompassing the employees of more than one employer. Id. at 3.

As stated above, the Board in Oakwood was critical of and reversed the Sturgis Board's conclusion that a unit comprised of solely employed and jointly employed employees constituted a single employer unit that complied with the single employer mandate in Section 9(b) of the Act.[13] Thus, under Oakwood, the combined unit found appropriate in Outokumpu Copper and

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[12] See Oakwood Care Center Slip Op. at 3-4. and M.B. Sturgis at 1304-1305
See also Section 9(b), which states:

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the *employer unit, craft unit, plant unit, or subdivision thereof.*

[13] In Oakwood, the Board stated that the decision in Sturgis was a "strained interpretation" of the phrase "employer unit" that essentially merged the user employer and supplier employer into a single employer and noted that the loss of direction caused by the holding in Sturgis, "gave rise to anomalous decisions …." Id. at 3-4.

the unit proposed by the Employer in this case are multiemployer units, and under Section 9(b) of the Act, the Board will not impose such units.[14]

In sum, I conclude that the Petitioner's proposed single employer unit is an appropriate unit, despite the community of interest that the Employer's solely employed employees share with its jointly employed employees, and I conclude that the Employer's proposed multiemployer unit is not an appropriate unit pursuant to Section 9(b) of the Act and the Board's holding in Oakwood.

III. CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' arguments made at the hearing and the brief filed by the Employer, and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a Virginia corporation with a facility and office located in Stockton, California, where it is engaged in the manufacture of automobile frames. During the past 12 months, the Employer in conducting its business operations has directly purchased and received products valued in excess of $50,000 from suppliers located outside the State of California. In such circumstances, I find the assertion of jurisdiction in this case to be appropriate.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

[14] I also note that in Greenhoot, which was re-affirmed by the Board in Oakwood, the Board rejected the proposed multiemployer unit, but the union was given the option of proceeding in elections in the various single employer units. See Greenhoot, 205 NLRB 250, 251.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Stockton facility, including, team leaders, alternate team leaders, production or product control specialists, quality specialists, product technicians (including quality control technicians, forklift operators, cycle counters, and material handlers), support technicians (including maintenance technicians, maintenance lead technicians, controls technicians, and E-coat technicians), and support apprentice technicians; excluding temp-for-hire employees, other temporary employees, office clerical employees, guards, and supervisors as defined by the Act.

The record shows that there are in excess of approximately 230 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by SHOPMEN IRONWORKERS LOCAL UNION NO. 790. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned shall make the list available to the Petitioner when the undersigned shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **September 21, 2005.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request

must be received by the Board in Washington by 5 p.m., EST on **September 28, 2005.** The request may **not** be filed by facsimile. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes

to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance electronic filing can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Dated: September 14, 2005

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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177-8580-5500
401-2575-4200
440-1740-5000
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